No. 93-5418

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ORRIN SCOTT REED,
Petitioner,
v.
ROBERT FARLEY, Superintendent, Indiana State Prison, and PAMELA CARTER, Attorney General Of Indiana,
Respondents.

On Writ of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR PETITIONER

Counsel of Record:
Jerold S. Solovy
JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

Of Counsel:
Barry Levenstam
Ellen R. Kordik
Douglas A. Graham
Jason L. Peltz
JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611
(312) 222-9350

68 pp

QUESTION PRESENTED*

The Interstate Agreement on Detainers ("the IAD"), 18 U.S.C. app., is a federal law and compact signed by forty-eight states and the federal government, which sets out the rights of individuals who are subject to trial in one jurisdiction while in the custody of another jurisdiction's correctional facilities.

The question presented is:

Whether the court of appeals erred (a) by extending the reasoning of *Stone v. Powell* to bar categorically federal habeas review of state prisoners' claims that they are being held in custody in violation of the speedy trial guarantee of the IAD, an interstate compact and a "law[ ] . . . of the United States" that safeguards the Sixth Amendment's fundamental speedy trial right; and (b) by refusing to provide this claim with collateral review based upon the same standards that it would use in collateral review of a constitutional claim.

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* Petitioner, an individual, was the only petitioner in the district court. Respondents, also individuals, were the only respondents below.

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BRIEF FOR PETITIONER

JUDGMENTS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit affirming the District Court's denial of a writ of habeas corpus (J.A. 199-211) and denying rehearing and rehearing in banc, with the dissent from the denial of rehearing in banc (J.A. 212-14), is reported as *Reed v. Clark*, 984 F.2d 209 (7th Cir. 1993). The opinion of the United States District Court for the Northern District of Indiana denying Petitioner a writ of habeas corpus is unreported. (J.A. 188-98.)

The decision of the Indiana Supreme Court affirming Petitioner's conviction (J.A. 152-68) is reported as *Reed v. State*, 491 N.E.2d 182 (Ind. 1986). The post-conviction decisions of the Indiana Circuit Court (J.A. 169-73) and the Indiana Appellate Court (J.A. 174-87) are unreported. The Indiana Supreme Court denied review.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals (J.A. 199-211) was entered on January 19, 1993, and a decision on a petition for rehearing and rehearing in banc was entered on April 27, 1993. The petition for writ of certiorari was filed on July 26, 1993, and granted on November 8, 1993. (J.A. 215.) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions, which are set forth in the Appendix to this brief:

U.S. Constitution art. I, § 10, cl. 3;

U.S. Constitution art. VI, cl. 2;

U.S. Constitution amend. VI;

Interstate Agreement on Detainers, 18 U.S.C. app.;

28 U.S.C. § 2241;

28 U.S.C. § 2254; and

28 U.S.C. § 2255.

STATEMENT OF THE CASE

A. Statement of Facts

1. Events Prior to Petitioner's Transfer To Fulton County.

Orrin Scott Reed ("Petitioner") is a sixty-two-year-old man who in 1979 was working as an interstate truck driver based in Rochester, Indiana. (R. 958, 968-69, 1230.)[1] On November 12,

[1] The following abbreviations will be used in this brief:

"App." for the Appendix of the Petitioner bound with this brief;

"J.A." for the Joint Appendix;

"R." for the state trial court proceedings and "R.P.C." for the state post-conviction proceedings.

1979, an auto insurance claim was filed on a pickup truck belonging to Marsha Lee, then Petitioner's common-law wife. (R. 24, 631-33.) As a result of the claim, Ms. Lee received $4,666 in insurance proceeds, $3,101.52 of which was used to satisfy a loan for which the pickup truck was collateral. (R. 582, 631.) A few months later, on April 9, 1980, Petitioner was arrested by federal authorities on charges (unrelated to the insurance claim) of transporting stolen goods and conspiracy. (R. 258.) He was convicted, and sentenced to serve a five year term in a federal penitentiary. (R. 260.)

In March 1981, while Petitioner was in federal custody, police discovered Ms. Lee's pickup in the possession of Larry Shelton. (R. 21.) Mr. Shelton claimed to have purchased the pickup from a Robert Smith. (R. 22.) Mr. Smith in turn claimed that he had purchased the pickup from Petitioner in the summer of 1979. (R. 22-23.)

After the police investigation was completed, the State of Indiana did nothing with its results for over a year. (R. 852.) Then, on December 15, 1982, the State charged Petitioner in the Circuit Court of Fulton County with the theft of $4,666, and with being a habitual offender. (R. 15, 25.) On the same day, that court issued a bench warrant for Petitioner's arrest. (R. 11-12, 18.)

On January 24, 1983, the State sent the federal warden a letter by which it lodged a detainer against Petitioner under the Interstate Agreement on Detainers (the "IAD"). (R. 1219.) In that letter, the State informed the warden that it shortly would be sending him a "request for temporary custody." (R. 1219.)

The federal warden informed Petitioner of the detainer on January 26, 1983. (R. 1220-21.) At that time, Petitioner was about to become eligible to serve the remaining months of his sentence in a community correctional facility, *i.e.*, a halfway house. (J.A. 11-12; R. 53, 261, 353.)

As stated in its letter of January 24, the State sent a "Request for Temporary Custody" to the federal prison authorities on March 3, 1983. (J.A. 4-6.) The Request sought the transfer of Petitioner from federal custody to Fulton County to stand trial on the state theft charge. (J.A. 5.) By signing the Request, the State agreed to try Petitioner within the IAD's 120-day mandatory trial period:

> I propose to bring this person to trial on this [information] within the time specified in Article IV(c) of the [IAD].

(J.A. 5.) Article IV(c) of the IAD requires that trial must commence "within one hundred and twenty days of the arrival of the prisoner in the receiving State." Art. IV(c), 18 U.S.C. app. § 2. If this requirement is not followed, the charge must be dismissed with prejudice. Art. V(c), 18 U.S.C. app. § 2.

As part of the Request, the Fulton County Circuit Court was required to, and did, sign and certify that "the facts recited in this request for temporary custody are correct and . . . I hereby transmit it for action in accordance with its terms and the provisions of the Agreement on Detainers." (J.A. 5-6.) Hence, the trial court was on notice of the applicability and terms of the IAD.

2. Petitioner's Transfer To Fulton County.

The State of Indiana took Petitioner into its custody on April 27, 1983. (R. 32.) This started the IAD's 120-day speedy trial period, which required the State to bring Petitioner to trial by August 25, 1983.

On May 9, 1983, after being in custody for two weeks, Petitioner appeared before the trial court for the first time. He was not represented by an attorney. Petitioner informed the trial court that he would be in a federal halfway house but for the detainer. (J.A. 12.) The court acknowledged there is "a world of difference" between a halfway house and the Fulton County Jail. (J.A. 14.)

At this hearing, Petitioner informed the court that he preferred to represent himself with the assistance of a court-appointed lawyer. (R. 329.) The court contacted and appointed Jere Humphrey, an attorney in a neighboring county, to assist Petitioner. (J.A. 13, 22.) After an initial interview on the following day, May 11, Petitioner was unable to reach Mr. Humphrey for more than a month. (J.A. 25; R.P.C. 146.) At the same time, Petitioner had access to only very limited legal materials in the Fulton County Jail. (J.A. 37.)

On June 27, 1983, the trial court held a pretrial conference. At the conference, Petitioner stated that he had tried for approximately five weeks to get in touch with Mr. Humphrey. (J.A. 25.) When Mr. Humphrey had finally contacted Petitioner, it was to inform Petitioner that he would not be at the pretrial conference because he would be on vacation. (*Id.*) Acting on his own behalf, Petitioner asked for dismissal of the Indiana charges, asserting certain violations of the IAD not at issue here. (J.A. 28-31.) The trial court took these IAD matters under advisement. (J.A. 35-36, 41.) Toward the conclusion of this June 27 pretrial conference, the court set a trial date of September 13, 1983, which was nineteen days beyond the IAD's 120-day limit. (J.A. 36.) Petitioner asked whether the court would prefer that he make future motions orally or in writing. The court responded "I want it in writing" and "I read better than I listen." (J.A. 39-40; *see also* J.A. 123 (noting preference for written motions).)

On July 15, 1983, the trial court issued a written order denying Petitioner's pending IAD motions. (J.A. 51-55.) At the same time, however, the trial court acknowledged that Petitioner was incapable of preparing or presenting his defense from his prison cell:

> It has become apparent to the Court through pretrial proceedings this far held, that the defendant will be incapable of presenting the kind of defense which he has contemplated to date, because of his incarceration.

(J.A. 54.)

On July 26, 1983, thirty-one days before the 120-day period expired, Petitioner, still acting on his own behalf, filed a motion requesting that "trial be held within the legal guidelines of the Agreement on Detainers . . . ." (J.A. 56.) Petitioner also asserted in this motion that the State of Indiana was "forcing [him] to be tried beyond the limits as set forth in the Agreement on Detainer Act." (*Id.*) Further, this motion specifically "requests no extension of time be granted beyond those guidelines." (*Id.*) On July 29, 1983, twenty-eight days before the 120-day period expired, Petitioner again specifically stated in a motion that there was "limited time left for trial within the laws." (J.A. 88.) Notwithstanding these motions, on August 1, 1983, the court moved the September 13 trial date back to September 19 to accommodate the court's schedule. (J.A. 81, 86.)

On August 1, 1983, the trial court also ordered the sheriff to provide Petitioner with access to legal materials. (J.A. 85.) Petitioner received a book on Indiana court procedure and a basic criminal law text book on August 9, 1983. (J.A. 83, 90.) With access to legal publications, Petitioner's motions became more specific. On August 10, Petitioner filed a motion for subpoenas that referenced Indiana rules. (J.A. 90.) In that motion, Petitioner asked for prompt relief, because the "Detainer Act time limits" were "approaching." (J.A. 91.)

On August 29, 1983, four days after the 120-day period had expired, Petitioner filed a "Petition for Discharge" seeking dismissal of the charges against him on the basis that he was not tried within 120 days. (J.A. 94-96.)

Two weeks later, at a hearing on September 13, 1983, Petitioner addressed the basic points that he made in his written motion. (J.A. 106-10.) Petitioner argued that both the prosecuting attorney and the trial court had signed the Request For Temporary Custody in which they agreed to abide by the IAD requirements. (J.A. 107.) Furthermore, Petitioner noted that he

had informed the trial court in his July 26 motion of its IAD responsibilities. (J.A. 109.) The State responded to Petitioner's presentation by arguing that Petitioner's sole recourse was to seek exclusion of evidence obtained because of the IAD violation. After conceding that "we may not have followed [the IAD requirements]," the State asserted that "the Court . . . may grant any necessary or reasonable continuance. It's not a very strict standard . . . ." (J.A. 112-13.)

Despite having signed the Request for Temporary Custody in which it certified compliance with the IAD, the trial court stated: "Today is the first day I was aware that there was a 120 day limitation on the Detainer Act." (J.A. 113.) After acknowledging that "there has been [from Mr. Reed] a request for moving the trial forward" and "an urging that [the trial] be done within the [IAD] guidelines that have been set out," the court stated that it was going to deny Petitioner's dismissal motion based on the Court's belief that there had not been a speedy trial request filed, the State's rationale, and the lack of any showing that dismissal was the appropriate remedy. (J.A. 113-14.) The court's written order denied the motion without explanation. (J.A. 125.)

B. Proceedings and Disposition Below.

Petitioner's trial commenced on October 18, 1993. (J.A. 148.)[2] Although Petitioner examined most of his own witnesses, he allowed Mr. Humphrey to represent him by the end of the trial.

[2] The trial was scheduled to begin on September 19, 1983. Shortly before that date, however, the local newspaper published an article that described Petitioner's prior criminal record, which was to be excluded from the theft trial based on Petitioner's successful motion in limine. (J.A. 132-33.) The article also listed the names of all the citizens that had been called for possible jury duty. (J.A. 133, 144.) On the court's own motion, the trial was postponed. Petitioner and the State consented to this postponement from a date that already exceeded the 120-day time limit. (J.A. 134, 142.) Petitioner was released on bond on September 28, 1983. (J.A. 148.)

(J.A. 149.)[3] On October 22, 1983, a jury found Petitioner guilty of theft in the amount of $4,666. (J.A. 150.) The same jury also determined that Petitioner was a habitual offender under Indiana law. (J.A. 150.) On November 14, 1983, the trial court sentenced the then 52-year-old Petitioner to four years in prison on the theft conviction, and to thirty years in prison on the habitual offender conviction. The sentences run consecutively, making it likely, as Petitioner noted, that he will "die in a prison." (J.A. 17; R. 300.)

Mr. Humphrey filed a post-trial motion challenging the conviction on the ground that the trial had violated Petitioner's IAD speedy trial right. (R. 310-12.) On January 26, 1984, the trial court denied the post-trial motion. (R. 318.) On direct appeal to the Indiana Supreme Court, Mr. Humphrey argued, *inter alia*, that the conviction should be reversed because the State failed to bring Petitioner to trial within 120 days of his transfer from federal to state custody, as required by the IAD.

On April 7, 1986, the Indiana Supreme Court affirmed Petitioner's conviction. (J.A. 152-68.) The Court rejected Petitioner's claim that the State had violated his speedy trial rights under the IAD even though the State did not bring Petitioner to trial within the 120 days required under the IAD. (J.A. 156-57.) The Court acknowledged that Petitioner made "a general demand that trial be held within the time limits of the IAD" on July 26, 1983, but held that Petitioner was required to object to the untimely trial date "at the time the date was set or during the remainder of the time limit." (J.A. 157.) According to the Indiana Supreme Court,

[3] In his attempt to defend against what the prosecuting attorney recognized as a largely circumstantial case (R. 1116), Petitioner argued that Marsha Lee and Denver Manning conspired to file the false insurance claim while Petitioner was travelling in connection with his trucking business. (R. 557-1092.) Petitioner showed that the insurance check was endorsed by Ms. Lee and not by him, and that the insurance adjuster never met with Petitioner before paying the claim. (R. 655.) Petitioner also presented evidence that he had no monetary problems that would warrant his filing of a false insurance claim. (R. 963, 971, 981, 988-89.)

there were only two occasions on which Petitioner properly could have objected: on June 27, 1983, when the original trial date was set, or on August 1, 1983, when the trial date was reset. (J.A. 157.) The Court did not address Petitioner's three written motions filed on July 26, July 29, and August 10—all before the expiration of the 120-day limit.[4]

Petitioner filed his petition for a writ of habeas corpus in the United States District Court for the Northern District of Indiana on May 22, 1990. (J.A. 188.) Proceeding *pro se*, Petitioner argued, *inter alia*, that his rights under the IAD, and under the Fifth and Fourteenth Amendments to the U.S. Constitution, were violated when the State failed to bring him to trial within 120 days of his transfer from the federal penitentiary to Fulton County Jail.

On September 21, 1990, the district court issued an opinion denying Petitioner's habeas corpus petition on the merits. (J.A. 188-98.) The court ruled that various pretrial motions filed by Petitioner made him "unable to stand trial" and thus tolled the 120-day limit established in the IAD. (J.A. 195-96.) In addition, the district court ruled that Petitioner's speedy trial claim did not rise to the level of a constitutional challenge. (J.A. 197-98.)

Petitioner, acting *pro se*, filed a timely notice of appeal from the district court's decision on September 26, 1990, and the district court issued a certificate of probable cause for appeal on September 28, 1990. After briefs and argument from appointed counsel, the court of appeals affirmed the denial of the writ without considering the merits of Petitioner's IAD claim. (J.A. 199-211.) The court of appeals began by stating that it was rejecting all of the various approaches taken by other circuits for reviewing state court decisions on IAD violations. (J.A. 203-05.) Instead, the court of appeals held, citing *Stone v. Powell*, 428 U.S. 465 (1976),

[4] Petitioner also filed for post-conviction relief in the Indiana courts, in which he sought relief for the violation of his IAD speedy trial right. This relief was denied, and he exhausted all appeals by April 30, 1990. (J.A. 169-87.)

that collateral review of claims under the IAD was unavailable unless the state court had declined to consider the defendant's arguments. (J.A. 209.)

A petition for rehearing was denied; two judges voted for rehearing in banc. (J.A. 212-14.) One judge filed an opinion dissenting from the denial of rehearing in banc, noting that the case dealt "with a difficult problem upon which the circuits are in disarray and upon which the Supreme Court has given little firm guidance." (J.A. 212.) The dissent also noted that the disarray among the circuits defeated the IAD's purpose of having a national uniform method of transferring federal prisoners to be tried in state courts. (J.A. 214.)

Petitioner filed a petition for a writ of certiorari on July 26, 1993, and for permission to proceed *in forma pauperis*. This Court granted the petition and gave permission to proceed *in forma pauperis* on November 8, 1993. (J.A. 215.)

SUMMARY OF ARGUMENT

I.

The court of appeals erred in applying the rule announced by this Court in *Stone v. Powell*, 428 U.S. 465 (1976), to preclude federal collateral review of state prisoners' claims based on violations of the speedy trial guarantee of the Interstate Agreement on Detainers ("IAD"). This Court consistently has refused to extend *Stone* beyond the limited context of Fourth Amendment exclusionary rule violations. Moreover, the considerations underlying *Stone* are not present when state prisoners assert IAD speedy trial rights in habeas proceedings. Unlike the Fourth Amendment exclusionary rule, which this Court designed to deter future constitutional violations by the State, Congress enacted the IAD to safeguard the fundamental Sixth Amendment speedy trial right of prisoners transferred under the IAD. Also unlike the exclusionary rule, which often works to exclude reliable evidence, the

IAD enhances the soundness of the criminal process by requiring prompt adjudication before evidence goes stale. Finally, the federalism and comity concerns emphasized in *Stone* are absent when state prisoners assert IAD violations in habeas proceedings because the IAD is an interstate compact in which the states are voluntary participants. By entering into the compact, the states specifically agreed to abide by the IAD's provisions, including Congress's express direction that "all courts . . . of the United States" shall enforce the IAD's provisions.

II.

Federal habeas courts should review IAD speedy trial violations under 28 U.S.C. § 2254 ("section 2254") in the same way and under the same standards as they review constitutional violations under section 2254. Because the IAD's speedy trial guarantee safeguards a constitutional right, a state prisoner who asserts an IAD speedy trial violation asserts a claim of constitutional dimension. In addition, federal habeas courts have both a statutory duty under the express terms of the IAD and a constitutional duty under the Compact and Supremacy clauses of the United States Constitution to review fully whether a state has violated the IAD. Full federal collateral review is essential to ensure that the compact is uniformly interpreted. Indeed, in *Carchman v. Nash*, 473 U.S. 716 (1985), this Court implicitly recognized that violations of the IAD's speedy trial guarantee should be reviewed under section 2254 in the same manner as constitutional violations.

III.

The plain language of the IAD required dismissal of the charges against Petitioner. The state courts and the district court failed to enforce the IAD's unambiguous provisions. As a result, Petitioner is held in custody in violation of one of the "laws . . . of the United States," and a writ of habeas corpus should issue.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN APPLYING *STONE v. POWELL* TO PRECLUDE FEDERAL HABEAS CORPUS REVIEW OF PETITIONER'S CLAIM THAT THE STATE COURT VIOLATED THE IAD'S GUARANTEE OF A SPEEDY TRIAL.

This case should have involved the straightforward application of the Interstate Agreement on Detainers (the "IAD"), a federal law and an interstate compact, 18 U.S.C. app. §§ 1-9, to essentially uncontested facts. The plain language of the IAD required the State of Indiana to try Petitioner within 120 days after his transfer from federal custody to Indiana custody. Art. IV(c), 18 U.S.C. app. § 2. It did not. The IAD permits extension of this period only upon "good cause shown in open court." *Id.* No such extension was requested or granted. The plain language of the IAD also required that, if Indiana failed to meet the IAD's 120-day speedy trial time limit, Indiana was to dismiss its charges against Petitioner with prejudice. Art. V(c), 18 U.S.C. app. § 2. It did not. The IAD further directs that "[a]ll courts . . . of the United States . . . are hereby directed to enforce the agreement on detainers." 18 U.S.C. app. § 5. Petitioner sought this enforcement in federal court. It was denied.

The court of appeals held that Petitioner was barred altogether from seeking habeas review of the IAD speedy trial violation under the rule announced by this Court in *Stone v. Powell*, 428 U.S. 465 (1976). In so holding, the court of appeals failed to analyze the unbroken line of decisions from this Court refusing to expand *Stone* beyond the limited context of the Fourth Amendment exclusionary rule. *See, e.g.*, *Withrow v. Williams*, 113 S. Ct. 1745 (1993);[5] *Kimmelman v. Morrison*, 477 U.S. 365

[5] Apparently believing that this Court would reach the opposite conclusion in *Withrow*, the court of appeals cited the grant of certiorari in *Withrow* in support of its ruling that *Stone* should be extended to preclude habeas review of IAD speedy trial violations. (J.A. 206.) Although this Court issued its decision in *Withrow* while the petition for rehearing was pending below, the court of appeals did not alter its opinion upon rehearing.

(1986); *Rose v. Mitchell*, 443 U.S. 545 (1979); *Jackson v. Virginia*, 443 U.S. 307 (1979). The court of appeals also overlooked: (1) the *Stone* Court's statement that its holding addressed the particular nature of the Fourth Amendment exclusionary rule rather than the scope of habeas corpus review generally; (2) Congress's express mandate that all federal courts "are directed to enforce" the provisions of the IAD, 18 U.S.C. app. § 5; and (3) the fact that Indiana signed the IAD, an interstate compact, which mitigates the considerations of federalism and comity underlying *Stone*'s limitations on federal habeas review.

A. This Court Consistently Has Refused To Extend *Stone* Beyond Claims Brought Under The Fourth Amendment Exclusionary Rule.

In *Stone v. Powell*, this Court held that federal habeas review of a purported violation of the Fourth Amendment exclusionary rule is available only when the state court has failed to grant a full and fair opportunity to litigate that claim. 428 U.S. 465, 494 (1976). The *Stone* Court made clear that its "decision [did] not mean that the federal court lacks jurisdiction over such a claim." *Id.* at 494-95 n.37. Rather, *Stone* rested on prudential grounds arising out of the singular nature of the exclusionary rule itself. As the Court noted, the exclusionary rule (as distinguished from the Fourth Amendment rights whose violation it is intended to deter) is not a "personal constitutional right" and is not "calculated to redress the injury to the privacy of the victim of the search or seizure." *Id.* at 486. Rather, that rule " 'is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect . . . .' " *Id.* (quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974)). The exclusionary rule is not designed to stop a specific violation from occurring, or even to redress the injury that flows from a violation of the

Fourth Amendment, because "any '[r]eparation comes too late.' " *Id.* (quoting *Linkletter v. Walker*, 381 U.S. 618, 637 (1965)).

In deciding *Stone*, this Court "carefully limited the reach of its opinion." *Rose v. Mitchell*, 443 U.S. 545, 560 (1979). The *Stone* Court recognized that "Fourth Amendment violations are different in kind from denials of Fifth or Sixth Amendment rights." 428 U.S. at 479-82. Further, the Court's opinion rejected as "misdirected hyperbole" the dissent's concern that *Stone* lays a groundwork for the withdrawal of federal habeas jurisdiction for, among other things, violations of the right to a speedy trial. *Id.* at 494-95 n.37 (addressing dissent of Brennan, J., *id.* at 518 n.13). The Court emphasized that its ruling "is *not* concerned with the scope of the habeas corpus statute" but is based on the fact that the exclusionary rule is a judicially created right whose utility is minimal when applied in a habeas proceeding. *Id.* at 494-95 n.37 (Court's emphasis).

This Court repeatedly has refused to extend the reasoning of *Stone v. Powell* beyond the collateral review of Fourth Amendment exclusionary rule violations. *See Withrow v. Williams*, 113 S. Ct. 1745 (1993) (declining to extend *Stone* to *Miranda* claims); *Kimmelman v. Morrison*, 477 U.S. 365 (1986) (declining to extend *Stone* to Sixth Amendment ineffective assistance of counsel claims); *Rose v. Mitchell*, 443 U.S. 545 (1979) (declining to extend *Stone* to equal protection claims); *Jackson v. Virginia*, 443 U.S. 307 (1979) (declining to extend *Stone* to due process claims under the Fourteenth Amendment).

These cases demonstrate that this Court should exercise extreme caution before extending the ruling in *Stone*:

> [D]ecisions concerning the availability of habeas relief warrant restraint. Nowhere is the Court's restraint more evident than when it is asked to exclude a substantive category of issues from relitigation on habeas.

Withrow, 113 S. Ct. at 1758 (O'Connor, J., concurring in part, dissenting in part).[6]

B. The Considerations That Led To The Ruling In *Stone* Do Not Warrant Barring IAD Speedy Trial Claims From Federal Habeas Corpus.

1. The IAD Speedy Trial Guarantee Is A Personal Trial Right That Congress Provided To Protect The Fundamental Sixth Amendment Speedy Trial Right; The Remedy For Its Violation Is Calculated To Prevent A Tardy Trial Or Redress A Violation If A Tardy Trial Is Conducted.

"[T]he right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment." *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967). Indeed, the "history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution." *Id.* at 226. Unlike the judicially-created exclusionary rule at issue in *Stone*, the IAD speedy trial guarantee is a fundamental personal right enacted by Congress to safeguard individuals' Sixth Amendment speedy trial rights.

The most serious problem that the speedy trial right is intended to prevent is " 'the possibility that the [accused's] defense will be impaired' by dimming memories and loss of exculpatory evidence." *Doggett v. United States*, 112 S. Ct. 2686, 2692 (1992) (quoting *Barker v. Wingo*, 407 U.S. 514, 532 (1972)). The speedy trial right assures that a defendant will be able to obtain exculpatory evidence without facing the risk that "witnesses [will have] die[d], disappear[ed]," or "are unable to recall accurately events of the distant past." *Barker*, 407 U.S. at 532. This problem is most serious, "because the inability of a defendant adequately to

[6] No other court of appeals has applied the rationale of *Stone* in deciding whether to accord habeas review to alleged violations of the IAD since *Stone* was decided seventeen years ago. Indeed, the State of Indiana did not advance this argument below, and it was not briefed to the court of appeals.

prepare his case skews the fairness of the entire system." *Doggett*, 112 S. Ct. at 2692 (quoting *Barker*, 407 U.S. at 532).[7] Further, this Court has expressly recognized that the sole remedy for violation of the speedy trial right is dismissal of the charges. *Strunk v. United States*, 412 U.S. 434, 439-40 (1973); *Barker*, 407 U.S. at 522.

This Court has recognized specifically the importance of the speedy trial right to persons already incarcerated on unrelated charges. *Moore v. Arizona*, 414 U.S. 25, 27 (1973) (recognizing the cognizability of speedy trial claim even though petitioner already was incarcerated in another state on other charges); *Strunk*, 412 U S. at 439 (speedy trial guaranteed even for confined persons); *Dickey v. Florida*, 398 U.S. 30, 36-38 (1970) (same); *Smith v. Hooey*, 393 U.S. 374, 378-79 (1969) (same). In *Smith*, this Court held that "delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is held without bail upon an untried charge." 393 U.S. at 378.

Specifically, *Smith* held that the most important concern of the speedy trial right — the possibility that the defense will be impaired — is "markedly increased when the accused is incarcerated in another jurisdiction." 393 U.S. at 379. The *Smith* Court explained that an incarcerated defendant loses the "ability to confer with potential defense witnesses, or even to keep track of their whereabouts." *Id.* at 379-80. While all defendants subject to delayed trials are prejudiced by evidence disappearing and memories fading, the Court concluded, "a man isolated in prison is powerless to exert his own investigative efforts to mitigate these erosive effects of the passage of time." *Id.* at 380.[8]

[7] The right to a speedy trial also is designed to prevent the harm from oppressive pretrial incarceration, to minimize anxiety and concern, and to minimize the risk of public scorn, disruption of one's life, and chilled speech. *See, e.g.*, *Barker*, 407 U.S. at 532.

[8] *Smith* noted several other ways in which prisoners are harmed by delay in bringing them to trial on pending charges, including the loss of the possibility of obtaining concurrent sentences, denial of clemency, pardon, and parole, and denial of participation in rehabilitative programs. 393 U.S. at 378 & n.11. *Smith* also held that anxiety from an untried charge "can have fully as depressive an effect upon a prisoner as upon a person who is at large." 393 U.S. at 379.

One of the primary purposes of the IAD was to protect the constitutional speedy trial right. Congress adopted the IAD in response to this Court's conclusion in *Smith v. Hooey*, 393 U.S. 374 (1969), and *Dickey v. Florida*, 398 U.S. 30 (1970), that incarcerated individuals retain the constitutional right to a speedy trial on all outstanding charges.

In Article I of the IAD, Congress found that legislative action was merited by "difficulties in securing speedy trial of persons already incarcerated in other jurisdictions." Art. I, 18 U.S.C. app. § 2; *see also* Art. V(a), *id.* (requiring states to deliver prisoners so that "speedy and efficient prosecution may be had"). Articles IV(c) and V(c) require that signatory states bring defendants to trial within 120 days of receiving custody or dismiss the charges with prejudice. *Id.* Thus, the IAD signatories agreed to be bound to commence their trials within specific periods of time—an agreement that this Court has recognized as entirely appropriate. *See Barker*, 407 U.S. at 523 (noting the difficulty for courts to prescribe a specific number of days after which the speedy trial right is violated). The signatories also agreed that the remedy for failure to adhere to the speedy trial provision must be dismissal—the remedy that this Court has recognized as the only possible remedy for such a violation. *Barker*, 407 U.S. at 523.

The Senate Report verifies that Congress passed the IAD to protect the speedy trial rights of already incarcerated individuals:

> [I]n *Smith v. Hooey* . . . the Supreme Court ruled that a prisoner charged with a State offense has a right to speedy trial and that the State is under an obligation to make a diligent, good faith effort to bring a defendant to trial within a reasonable time, even when he is serv-

> ing a sentence in a Federal prison outside the State involved.
>
> More recently, the Supreme Court of the United States ruled on May 25, 1970, in the case of *Dickey v. Florida* . . . , that a criminal conviction . . . must be vacated because the State had failed to bring the defendant to trial for a period of over 7 years on account of his detention during that time in a Federal penitentiary.
>
> The committee is of the opinion that the enactment of this legislation would afford defendants in criminal cases the right to a speedy trial and diminish the possibility of convictions being vacated or reversed because of a denial of this right.

S. Rep. No. 1356, 91st Cong., 2d Sess. at 1 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4864; *see also* H.R. Rep. No. 1018, 91st Cong., 2d Sess. at 1-2 (1970); 116 Cong. Rec. H14000 (1970) (remarks of Rep. Poff); *id.* at S38840 (remarks of Sen. Hruska). Based on the language of the IAD and its legislative history, this Court concluded in *Carchman v. Nash* that a chief purpose of the IAD is to prevent violations of the speedy trial right: "Congress . . . enacted the Agreement in part to vindicate a prisoner's constitutional right to a speedy trial." 473 U.S. at 731 n.10; *see also Cuyler v. Adams*, 449 U.S. 433, 435 n.1 (1981) (the IAD established "procedures that ensure protection of the prisoner's speedy trial rights"). Thus, unlike the judicially-created exclusionary rule, Congress enacted the IAD to protect a fundamental personal right, and to remedy a violation of that right.

This Court's recent decision in *Withrow v. Williams*, 113 S. Ct. 1745 (1993), confirms the importance of this distinction. In *Withrow*, 113 S. Ct. at 1751, this Court affirmed the lower courts' refusal to extend *Stone* to bar habeas review of violations of *Miranda v. Arizona*, 384 U.S. 436 (1966). This Court based its ruling in part on its conclusion that the *Miranda* safeguards differed from the Fourth Amendment exclusionary rule. The *Withrow* Court observed that the Fourth Amendment exclusionary rule "is

not a personal constitutional right" because it is not designed to address the constitutional rights of the person who invokes the rule. 113 S. Ct. at 1753. In contrast, *Withrow* holds, the safeguards of *Miranda* are designed to address the constitutional rights of the person who invokes it. *Id.* at 1752-53.[9]

The *Withrow* Court further distinguished *Stone* on the basis that whereas the Fourth Amendment exclusionary rule does not safeguard a trial right, "*Miranda* safeguards 'a fundamental *trial* right.' " 113 S. Ct. at 1753 (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990)) (*Withrow* Court's emphasis). In other words, this Court reasoned that while a defendant's assertion of the exclusionary rule at trial cannot prevent a violation of the Fourth Amendment (that violation occurred at the time of the improper search or seizure), a defendant can assert *Miranda* at trial to prevent a violation of the Fifth Amendment, which would occur if he were "compelled in any criminal case to be a witness against himself."

Unlike the exclusionary rule, but just like *Miranda*, the IAD's speedy trial guarantee is "personal" in that its purpose and effect are to protect the constitutional rights of the person who invokes the right. Also like *Miranda*, the IAD speedy trial guarantee is a "trial right" in that it permits an individual to invoke the right at (or before) trial to prevent its violation. Consequently, this Court should refuse to extend *Stone* to bar categorically habeas relief for violations of the IAD speedy trial guarantee.[10]

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[9] *See also Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986) ("In contrast to the habeas petitioner in *Stone*, who sought merely to avail himself of the exclusionary rule, Morrison seeks direct federal habeas protection of his personal right to effective assistance of counsel.").

[10] Violation of the right to a speedy trial is not mere "trial error" that occurs during the presentation of the case to the jury—it is "at the other end of the spectrum of constitutional errors" because it is a "structural defect" in the trial mechanism. *See Brecht v. Abrahamson*, 113 S. Ct. 1710, 1717 (1993) (noting that while impeaching a defendant based on his silence following *Miranda* warnings is mere "trial error," violation of the Sixth Amendment right to counsel is a crucial error because the Sixth Amendment is of critical importance).

2. The IAD Speedy Trial Guarantee Enhances The Soundness Of The Criminal Process.

Also, unlike the exclusionary rule in *Stone*, the IAD speedy trial guarantee enhances the soundness of the criminal process. The *Stone* Court based its ruling in part on the fact that the exclusionary rule diverted attention away from the ultimate question of guilt and excluded typically reliable evidence. 428 U.S. at 489-90. In *Withrow*, this Court declined to extend *Stone* in part on the basis that *Miranda* functions to prevent the use of coerced, and therefore potentially unreliable, statements at trial. Because *Miranda* does not "serve some value *necessarily divorced* from the correct ascertainment of guilt," *Stone*'s categorical exclusion from habeas review was inappropriate for claimed *Miranda* violations. 113 S. Ct. at 1753 (emphasis added).

In a separate opinion in *Withrow*, Justice O'Connor noted that *Miranda* also may exclude reliable evidence, pointing out that statements obtained in technical violation of *Miranda*—statements that are unwarned but voluntary—are very reliable. *Withrow*, 113 S. Ct. at 1762 (O'Connor, J., concurring in part, dissenting in part). Nevertheless, the *Withrow* majority refused to invoke *Stone* to preclude the habeas review of *Miranda* claims categorically, because some statements obtained in violation of *Miranda* are unreliable. Rather, the *Withrow* Court explained that in the long run a system that admits into evidence confessions obtained in violation of *Miranda* will be less reliable than a system that excludes such evidence. 113 S. Ct. at 1753. In other words, the Court decided that, as long as a right is not "necessarily divorced" from the correct ascertainment of guilt, *id.*, it would uphold the availability of federal court review for violations of that right.

In contrast to *Stone*, and like *Withrow*, the IAD's speedy trial guarantee enhances the soundness of the criminal process by requiring the State to proceed to trial promptly after bringing charges. In this manner the IAD's speedy trial guarantee serves

to prevent evidence from going stale, thereby enhancing the reliability of evidence and assisting in the correct ascertainment of guilt. *See Doggett*, 112 S. Ct. at 2692-93; *Barker*, 407 U.S. at 532. The importance of the speedy trial is heightened when, as here, the defendant is incarcerated and cannot keep track of potential witnesses. *See Smith*, 393 U.S. at 379-80. It becomes of paramount importance when a man is "isolated in prison" and is left "powerless to exert his own investigative efforts to mitigate the erosive effects of the passage of time," *id.*, as Petitioner here was. (J.A. 25, 87-88.)

Like *Miranda*, the IAD speedy trial guarantee requires prompt adjudication precisely to enhance the reliability of evidence. As such, this right does not "serve some value *necessarily* divorced from the correct ascertainment of guilt," *Withrow*, 113 S. Ct. at 1753 (emphasis added), and does not warrant *categorical* exclusion from habeas review under *Stone*. Therefore, the Court should decline to preclude categorically all IAD speedy trial claims from habeas review.

3. Prudential Concerns Do Not Justify Barring Habeas Review Of An IAD Speedy Trial Violation.

Eliminating review of IAD speedy trial violations would neither significantly benefit the federal courts in exercising habeas jurisdiction, nor substantially advance the cause of federalism. *See Withrow*, 113 S. Ct. at 1754.

a. Eliminating IAD Speedy Trial Claims Will Not Significantly Benefit The Federal Courts In Their Exercise Of Habeas Jurisdiction, Because Individuals Will Merely File Sixth Amendment Claims.

In *Withrow*, this Court refused to extend *Stone* to bar *Miranda* claims in part based on this Court's judgment that many habeas petitioners would merely recast their *Miranda* claims as due process claims. 113 S. Ct. at 1754. As *Withrow* recognized, due proc-

ess claims require federal courts to "look to the totality of circumstances to determine whether a confession was voluntary." *Id.* Hence, the *Withrow* Court concluded: "We thus fail to see how abdicating *Miranda's* bright-line (or at least brighter-line) rules in favor of an exhaustive totality of circumstances approach on habeas would do much of anything to lighten the burdens placed on busy federal courts." *Id.*

Here, an extension of *Stone* to IAD speedy trial violations likewise will fail to decrease the number of habeas filings. If this Court bars habeas claims based on the IAD's speedy trial guarantee, petitioners will merely recast their claims as Sixth Amendment speedy trial claims. Violations of the IAD's "bright-line" speedy trial guarantee are comparatively simple to discern and address, as the IAD plainly requires that a state commence trial within 120 days of obtaining custody or dismiss the charges with prejudice. Petitions alleging a violation of the Sixth Amendment right to a speedy trial, however, are more time-consuming and difficult to review because those claims require courts to apply an exhaustive multi-factored balancing test. *See Barker*, 407 U.S. at 530-33 (speedy trial balancing test "necessarily compels courts to approach speedy trial cases on an *ad hoc* basis," requiring courts to engage in "a difficult and sensitive balancing process").

Indeed, petitioners precluded from raising IAD speedy trial violations would be even more likely to file habeas petitions alleging a constitutional violation than those stopped from raising *Miranda* claims. As Justice O'Connor pointed out in *Withrow*, not every petitioner who alleged that he was in state custody as the result of a *Miranda* violation would be able to convert that claim into one alleging a due process violation; to do so would require an allegation of compulsion, thus leaving those who were not warned and spoke voluntarily without a claim. *Withrow*, 113 S. Ct. at 1762 (O'Connor, J., concurring in part, dissenting in part). Here, however, every petitioner who can file a claim for violation of the IAD's speedy trial guarantee will be able to recast

that claim as one for violation of his Sixth Amendment right to a speedy trial, as to do so requires no additional facts. Therefore, eliminating IAD speedy trial claims will not significantly benefit the federal courts in their exercise of habeas jurisdiction.

b. Eliminating IAD Speedy Trial Claims Will Not Substantially Advance The Cause Of Federalism.

The *Withrow* Court also refused to extend *Stone* because eliminating *Miranda* claims from habeas review would not substantially advance the cause of federalism. 113 S. Ct. at 1754. Although *Withrow* acknowledged that a federal habeas court creates some tension each time it overturns a state conviction, the Court stated, "[i]t is not reasonable . . . to expect such occurrences to be frequent enough to amount to a substantial cost of reviewing *Miranda* claims on habeas or to raise federal-state tensions to an appreciable degree." 113 S. Ct. at 1754-55. Further, the *Withrow* Court explained that there is little reason to believe that police are unwilling or unable to satisfy *Miranda*'s requirements. *Id.* at 1755.

Here, it is even less likely that federal courts will have to overturn state convictions based on the IAD's speedy trial guarantee with any frequency. *Miranda*'s setting is the rough and tumble world of the streets, where a "bright line" is often more illusory than real. The IAD's speedy trial guarantee, however, is fulfilled or denied in the courts, on the record and (usually) with counsel appearing for both sides. Indeed, the language of the IAD is clear and its provisions do not generally require complex balancing. Occasional exercise of the federal enforcement power will ensure that state courts will not ignore the plain dictates of this bright-line provision. *See Rose v. Mitchell*, 443 U.S. 545, 563 (1979) (refusing to extend *Stone* to bar equal protection claims because of the "educative" and deterrent effect of federal habeas review).[11]

[11] The instant case proves *Rose* correct. The trial court professed ignorance of the IAD's time limit (J.A. 113), despite having signed the Request for Tempo-

(Footnote continued on following page)

Furthermore, any federalism concerns are alleviated by the fact that the IAD is an interstate compact—a contract among the member states and the federal government. The parties to the IAD, *i.e.*, the federal government and forty-eight of the states, agreed to create and enforce a speedy trial right for prisoners transferred pursuant to the IAD. The signatory states agreed that when any one of them violated the speedy trial provisions of their agreement it would have to dismiss its charges with prejudice. Therefore, collateral review does not force states to abide by a federal court ruling like *Miranda*; rather, it involves uniform enforcement of the plain language of a compact to which the signatory states voluntarily agreed.[12] It will not intrude upon state comity to hold Indiana to the terms of its own agreement.

In addition, such review does not have an adverse interest on comity because the states anticipate that federal courts will review state courts' interpretation of the IAD. Section 5 of the IAD explicitly provides that "[a]ll courts . . . of the United States . . . are hereby directed to enforce the agreement . . . ." 18 U.S.C. app. § 5.[13]

Thus, the considerations that led to the ruling in *Stone* do not justify barring IAD speedy trial claims from federal habeas corpus. As this Court recently concluded in *Withrow*, federal collateral review is necessary to protect federal rights, even if it is not frequently invoked:

> And if, finally, one should question the need for federal collateral review of requirements that merit such respect,

(Footnote continued from previous page)

rary Custody, which cites the speedy provision of the IAD (J.A. 5), and despite Petitioner's several references to the IAD's time limits in his motions. (J.A. 56, 88, 91.) Federal enforcement of the IAD would educate the state courts.

[12] There is no requirement that states enter into the compact. Two states, Louisiana and Mississippi, have chosen not to join.

[13] This provision was part of the IAD when Indiana joined the agreement. Further, none of the states that became signatories before the United States exercised their right to withdraw when the United States signed the IAD. *See* Art. VIII, 18 U.S.C. app. § 2 (withdrawal rights).

> the answer simply is that the respect is sustained in no small part by the existence of such review. "It is the occasional abuse that the federal writ of habeas corpus stands ready to correct."

113 S. Ct. at 1755 (quoting *Jackson v. Virginia*, 443 U.S. 307, 322 (1979)).

II. FEDERAL COURTS SHOULD REVIEW IAD SPEEDY TRIAL CLAIMS UNDER 28 U.S.C. § 2254 AS THEY DO CONSTITUTIONAL CLAIMS.

Even absent the decision below applying *Stone v. Powell*, the federal courts remain splintered as to how to conduct habeas review of IAD violations. Some courts have evaluated claims of IAD speedy trial violations under section 2254 as they would claims of constitutional violations.[14] Other courts have required a heightened threshold showing of a "fundamental defect" amounting to a "miscarriage of justice" or "exceptional circumstances" before providing collateral review to claimed IAD violations. But the courts requiring the threshold showing have split among themselves as to whether IAD speedy trial violations make that showing: some courts have concluded that a violation of the IAD's speedy trial guarantee constitutes a sufficient showing because Congress's decision to mandate dismissal with prejudice as the only remedy for a speedy trial violation demonstrates its view of the seriousness of these violations; other courts have required a specific showing of actual prejudice flowing from the violation.[15] This case provides an appropriate opportunity for this Court to resolve this current split among the circuits.

[14] *See Birdwell v. Skeen*, 983 F.2d 1332, 1341 (5th Cir. 1993); *Cody v. Morris*, 623 F.2d 101, 103 (9th Cir. 1980); *United States ex rel. Escola v. Groomes*, 520 F.2d 830, 839 (3d Cir. 1975); *see also Mars v. United States*, 615 F.2d 704, 710 (6th Cir.) (Edwards, C.J., dissenting) (urging that no higher standard should apply to nonconstitutional claims), *cert. denied*, 449 U.S. 849 (1980); *United States v. Williams*, 615 F.2d 585, 589-90 (3d Cir. 1980) (granting relief under section 2255 for IAD violation).

[15] Compare *Brown v. Wolff*, 706 F.2d 902, 905 (9th Cir. 1983) ("we have little difficulty concluding that . . . a violation of the timely trial provisions presents

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This Court should hold that federal courts are to review IAD violations asserted under section 2254 in the same way and under the same standards as they review constitutional violations under section 2254. IAD speedy trial violations should receive the same review as constitutional claims because Congress enacted the IAD to safeguard prisoners' Sixth Amendment right to a speedy trial and because the IAD is a congressionally approved interstate compact that requires uniform federal interpretation. Alternatively, should this Court conclude that some higher threshold standard is required for collateral review of claimed violations of the IAD (or of federal laws generally) than is required for claimed violations of the federal Constitution, it should hold that IAD speedy trial violations meet this higher standard because Congress has mandated dismissal as the sole remedy for these violations, rather than leaving the question of remedy to the discretion of the courts.

A. The IAD Protects A Constitutional Right; Therefore, Federal Courts Should Review Violations Of The IAD Speedy Trial Guarantee As They Do Violations Of Constitutional Rights Under Section 2254.

Because the IAD's speedy trial guarantee effectuates a constitutional right, a state prisoner who asserts a violation of the

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an 'exceptional circumstance . . . .' ") *with Reilly v. Warden, FCI Petersburg*, 947 F.2d 43, 44-45 (2d Cir. 1991) (per curiam) (no exceptional circumstances in IAD violation), *cert. denied*, 112 S. Ct. 1227 (1992); *Seymore v. Alabama*, 846 F.2d 1355, 1359 (11th Cir. 1988) (requiring prejudice), *cert. denied*, 488 U.S. 1018 (1989); *Metheny v. Hamby*, 835 F.2d 672, 675 (6th Cir. 1987) (no fundamental defect), *cert. denied*, 488 U.S. 913 (1988); *Casper v. Ryan*, 822 F.2d 1283, 1290 (3d Cir. 1987) (distinguishing *Escola* and suggesting that "mandatory sanction of dismissal was just one of the factors that led" the court to grant habeas relief in *United States v. Williams*, 615 F.2d 585 (3d Cir. 1980)), *cert. denied*, 484 U.S. 1012 (1988); *Kerr v. Finkbeiner*, 757 F.2d 604, 607 (4th Cir.) (no claim in absence of prejudice), *cert. denied*, 474 U.S. 929 (1985); *Fasano v. Hall*, 615 F.2d 555, 558-59 (1st Cir.) (IAD violations not fundamental defects), *cert. denied*, 449 U.S. 867 (1980).

IAD's speedy trial guarantee asserts a claim of constitutional dimension. Accordingly, his claim should be collaterally reviewed as are constitutional violations under section 2254.

This Court's opinion in *Withrow* fully supports this conclusion. A violation of the IAD's speedy trial guarantee is akin to the federal claim asserted by the state petitioner in *Withrow*, which was based on a violation of the requirements of *Miranda*'s "prophylactic" safeguards of the Fifth Amendment. *See* 113 S. Ct. at 1752. Those safeguards were established by this Court specifically to protect a defendant's constitutional right against self-incrimination. 113 S. Ct. at 1753 (" 'Prophylactic' though it may be, in protecting a defendant's Fifth Amendment privilege against self-incrimination *Miranda* safeguards 'a fundamental *trial* right.' " (Court's emphasis; citation omitted)).

Withrow, therefore, involved a violation of one of the "laws . . . of the United States"—the *Miranda* prophylactic rule—and not necessarily a direct violation of the Constitution. This Court nonetheless held that the petitioner was entitled to have a federal court review the merits of his claim in a section 2254 proceeding. The Court did not subject the *Miranda* claim before it to any higher threshold for collateral review because it alleged a violation of a law of the United States. Nor did the Court impose any additional burdens on the state petitioner, such as an "exceptional circumstances" or "miscarriage of justice" requirement, before the merits of the petitioner's *Miranda* claim could be reviewed under section 2254. *Withrow*, 113 S. Ct. at 1750-55.

Rather than leave it to the courts to address speedy trial right violations on a case by case basis or to fashion a prophylactic rule to protect speedy trial rights, Congress adopted a rule explicitly requiring state courts to try prisoners transferred to them under the IAD within 120 days or dismiss the charges with prejudice. Art. IV(c), V(c), 18 U.S.C. app. § 2. There is no basis in this Court's jurisprudence or in section 2254 for holding a state prisoner claiming that he is in custody in violation of the IAD's

speedy trial guarantee to a different, higher standard than a state prisoner alleging a violation of *Miranda*.

Indeed, this Court implicitly recognized in *Carchman v. Nash*, 473 U.S. 716 (1985), that alleged violations of the IAD's speedy trial guarantee should be reviewed under section 2254 in the same manner as constitutional violations. In *Carchman*, a state prisoner in Pennsylvania sought habeas relief under section 2254, alleging that the State of Kentucky had violated the IAD by not bringing him to trial on a probation-violation charge within 180 days of the prisoner's demand to be tried, as mandated by the Article III of the IAD. Art. III(a), 18 U.S.C. app. § 2. The Court fully evaluated the merits of the petitioner's IAD claim, as it would a constitutional violation. 473 U.S. at 726-34. Although the Court ultimately determined that the IAD does not apply to probation violations, it did not employ any higher or different standard of review in *Carchman* than it employs for constitutional claims. In other words, the Court did not require the petitioner to demonstrate "exceptional circumstances" or a "miscarriage of justice" before considering the merits of his IAD claim. Thus, *Carchman* stands for the proposition that full collateral review of alleged IAD violations is appropriate and necessary under section 2254.

The Court should make explicit what already is implicit in *Withrow* and *Carchman*: because the IAD speedy trial guarantee is expressly intended to safeguard a fundamental constitutional right, claimed violations of that guarantee should be subject to collateral review identical to the collateral review accorded claimed violations of the Constitution under section 2254.

B. The IAD Is An Interstate Compact; Federal Review Under Section 2254 Is Necessary To Ensure Uniform Interpretation Of, And Compliance With, The IAD.

Full collateral review of IAD violations under section 2254 also is appropriate because the IAD is an interstate compact,

which must be interpreted and applied uniformly to accomplish the purpose that Congress intended: the establishment of an interstate system for the "expeditious and orderly disposition" of outstanding charges pending against individuals incarcerated in other member jurisdictions. *See* Art. I, 18 U.S.C. app. § 2. Federal review under section 2254 is essential to achieving uniform interpretation, an important goal since forty-eight states and the federal government rely on the IAD's provisions to lodge interstate detainers and bring out-of-state incarcerated defendants to trial. Uniform interpretation will permit the entire system to operate more efficiently, as state officials will be more cognizant of the IAD's requirements.

This Court repeatedly has emphasized that federal courts have a duty, originating in the Compact Clause and the Supremacy Clause of the United States Constitution (U.S. Const. art. I, § 10, cl. 3; art. VI, cl. 2), to conduct an independent review of states' compliance with interstate compacts. *See, e.g., West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 28-29 (1951) (construing Ohio River Valley Water Sanitation Compact). This duty includes reviewing a state's interpretation of its obligations under a compact and a state's own determination that it has satisfied the compact's obligations:

> Deference is one thing; submission to a State's own determination of whether it has undertaken an obligation, what that obligation is, and whether it conflicts with a disability of the State to undertake it is quite another.

Id. at 28; *see also Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 278 (1959); *Delaware River Joint Toll Bridge Comm'n v. Colburn*, 310 U.S. 419, 427 (1940).

Where the terms of a compact are unambiguous, it "must be construed and applied in accordance with its terms." *Texas v. New Mexico*, 482 U.S. 124, 128 (1987) (construing Pecos River Compact); *Texas v. New Mexico*, 462 U.S. 554, 564 (1983) ("unless the compact to which Congress has consented is somehow

unconstitutional, no court may order relief inconsistent with its express terms"). And where a federal court finds that a state has violated the terms of an interstate compact, it has the power to "rectify[ ] a failure to perform in the past as well as ordering future performance called for by the Compact." *Texas v. New Mexico*, 482 U.S. at 128.

These basic principles apply to federal courts reviewing claimed IAD violations under section 2254, as this Court held in *Carchman v. Nash*, 473 U.S. at 719 ("The [IAD] is a congressionally sanctioned compact within the Compact Clause . . . and thus is a federal law subject to federal construction."). Indeed, Congress expressly directed in the IAD that its provisions were to be enforced by "all courts . . . of the United States." 18 U.S.C. app. § 5. The plain language of that broad directive necessarily encompasses federal courts reviewing habeas corpus petitions. Thus, federal habeas courts have both a statutory duty under the express terms of the IAD and a constitutional duty under the Compact and Supremacy Clauses to review fully whether a state holds a prisoner in custody in violation of the IAD and to rectify a state's violation of the compact by issuing the writ.

This case pointedly illustrates the need for federal collateral review of states' compliance with the IAD. The IAD, like any interstate compact, provides benefits and imposes obligations. Here, Indiana received the benefit of obtaining Petitioner from federal custody to try him for theft. In exchange for that benefit, Indiana was obligated to try Petitioner within 120 days of his arrival in state custody or dismiss the charges against him with prejudice. Indiana received the benefit of the IAD here, but avoided its speedy trial obligation. In the absence of federal collateral review, states will be able to reap the benefits but avoid the obligations imposed by the IAD, just as did Indiana here. The result is an undermining of the entire interstate detainer system, a system based by necessity on cooperation between participating

States. *See* Art. I, 18 U.S.C. app. § 2 (proceedings on detainers "cannot properly be had in the absence of cooperative procedures").

The court of appeals below expressed the view that since the IAD was enacted by the state legislatures as well as Congress, there is no reason to believe that the courts of any state are more likely to undermine the IAD than any other of their own state laws. (J.A. 204-05.) But this overlooks the fact that the state legislatures had to enact the IAD on a substantive "take it or leave it" basis. To ensure the ability to obtain an inmate from another jurisdiction, for example, Indiana had to agree to try him within 120 days—and while the benefit of being able to bring a charged person to trial may be popular with the state legislature, the obligation to try that person within 120 days or dismiss the charges might not be as popular with the state judiciary. Indeed, Petitioner's state trial court professed ignorance of the IAD's 120-day requirement despite having certified the Request for Temporary Custody and despite Petitioner's IAD speedy trial motions. (J.A. 5-6, 56, 88, 91, 113.)

Hence, federal enforcement is necessary to ensure that the speedy trial rights that so concerned Congress are uniformly protected by all IAD signatories. In other words, federal review is needed to assure that the signatories to this interstate compact do not invoke the benefit of their agreement while ignoring their contractual obligations under it.

C. The Lower Courts That Have Adopted A Higher Standard For Collateral Review Of IAD Speedy Trial Violations Have Erroneously Borrowed That Standard From Section 2255 Cases Without Recognizing The Crucial Distinction Between Section 2255 Claims And Section 2254 Claims.

A number of lower courts have adopted a heightened threshold standard for conducting collateral review of IAD speedy trial

claims.[16] In doing so, these courts typically rely upon four decisions of this Court in cases brought by federal prisoners under section 2255: *United States v. Timmreck*, 441 U.S. 780 (1979); *Davis v. United States*, 417 U.S. 333 (1974); *Hill v. United States*, 368 U.S. 424 (1962); *Sunal v. Large*, 332 U.S. 174 (1947).

In fact, these cases do not support the conclusion that state prisoners' federal habeas claims that they are in custody in violation of the IAD speedy trial guarantee are to be subjected to a threshold standard higher than that for their federal habeas claims of constitutional violations. The error stems from the failure of the lower courts to appreciate the crucial difference between federal prisoners petitioning under section 2255 and state prisoners petitioning under section 2254: the federal prisoners already have had federal review of their federal law and constitutional claims; the state prisoners have not. As this Court noted in *United States v. Frady*, "a federal prisoner like Frady, unlike his state counterparts, has already had an opportunity to present his federal claims in federal trial and appellate forums." 456 U.S. 152, 166 (1982).

Review of these four cases demonstrates that they do not speak to the issue of whether state prisoner claims of IAD speedy trial violations—or of violations of "laws . . . of the United States" generally—should be subjected to a higher threshold standard than state prisoner claims of direct constitutional violations. In each of these cases, the petitioner (a federal prisoner) already had had an opportunity to have his federal "laws" claim reviewed by a federal court on direct appeal, before he filed his section 2255 petition alleging that his custody violated the "laws . . . of the United States." The petitioners in *Sunal*, *Hill*, and *Timmreck* had not appealed their federal convictions, and therefore had failed to take advantage of the opportunity for federal appellate review. Therefore, in each of those three cases, the petitioner was subject to the "general rule" that "[s]o far as *convictions obtained in the*

[16] *See* cases listed in footnote 15.

federal courts are concerned, . . . the writ of *habeas corpus* will not be allowed to do service for an appeal." *Sunal*, 332 U.S. at 178 (emphasis added); *see also Timmreck*, 441 U.S. at 784 ("[His claim] could have been raised on direct appeal . . . [a]nd there is no basis here for allowing collateral attack 'to do service for an appeal.' " (citation omitted)). The petitioner in *Davis* had raised his federal "laws" claim on direct appeal of his federal conviction and had lost. *Davis*, 417 U.S. at 337-39. He therefore already had obtained federal appellate review of his federal question.

There are sound reasons for this Court to impose a higher threshold standard on a federal prisoner's efforts to take a second trip through the federal courts on claims that he raised or could have raised in his criminal trial and appellate proceedings. This approach balances the need to conserve federal judicial resources against the federal prisoner's interest in having still further access to a federal court.

The practical need for a heightened threshold standard in section 2255 cases is brought into sharp focus when one considers the impact of the inclusion of "laws . . . of the United States" on the scope of that statute. Virtually every ruling in every federal criminal case hinges upon "laws . . . of the United States." Absent a heightened standard, any alleged federal defendant, even one who pleads guilty, could assert that any violation of a federal rule of criminal procedure during his federal trial or sentencing, no matter how minor or technical or harmless, constitutes a violation of one of the "laws . . . of the United States" entitling him to section 2255 habeas relief.[17] Indeed, this is the precise situation

[17] *See Edwards v. United States*, 564 F.2d 652, 654 (2d Cir. 1977) ("[A]lthough there was not the same need for including the term 'laws of the United States' in § 2255 as there was in § 2254 relating to state prisoners, Congress did so; on the other hand, since a literal reading would lead to the absurd conclusion that any non-harmless error in a federal criminal trial would provide grounds for collateral attack, the Supreme Court has provided a gloss that § 2255 relief is to

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that the Court addressed in *Hill* and *Timmreck* when it looked to whether the federal prisoner could demonstrate "exceptional circumstances" or a "miscarriage of justice" before it affirmed the denial of the writ. *See Hill*, 368 U.S. at 425 (alleged violation of Fed. R. Crim. P. 32(a)); *Timmreck*, 441 U.S. at 781 (alleged violation of Fed. R. Crim. P. 11).[18]

The same considerations do not apply when a state prisoner seeks collateral relief under section 2254. Prior to the filing of his section 2254 petition, a state prisoner has had no meaningful opportunity to have a federal court consider any federal claim. *See United States v. Frady*, 456 U.S. at 164 (noting the importance of federal court review of federal claims: "[o]nce the [federal] defendant's chance to appeal has been waived or exhausted . . . we are entitled to presume he stands fairly and finally convicted, especially when, as here, he already has had a fair opportunity to present his federal claims to a federal forum."); *Reed v. Ross*, 468 U.S. 1, 10 (1984) (noting that Congress enacted section 2254 to make federal courts serve " 'as guardians of the people's federal rights' " (citation omitted)).

Furthermore, as practical experience teaches, the inclusion of "laws . . . of the United States" in the scope of section 2254 has only a negligible effect on the habeas docket of the federal courts because so few "laws . . . of the United States" have any impact

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be given in cases not involving constitutional errors or lack of jurisdiction only when the claimed error of law was 'a fundamental defect which inherently results in a complete miscarriage of justice' and presents 'exceptional circumstances where the need for the remedy afforded by the writ of *habeas corpus* is apparent.' " (citations omitted)).

[18] That section 2255 relief does not encompass all claimed errors of federal law was also acknowledged by this Court in another section 2255 case, *United States v. Addonizio*, 442 U.S. 178 (1979). In *Addonizio*, the Court suggested that a petitioner must assert a lack of jurisdiction, constitutional error, or " 'a fundamental defect which inherently results in a complete miscarriage of justice' " to be entitled to section 2255 relief. *Id.* at 185 (quoting *Stone v. Powell*, 428 U.S. 465, 477 n.10, and *Hill*, 368 U.S. at 428).

upon state criminal proceedings.[19] And all section 2254 petitions also are subject to rules, created in the interests of comity and federalism, which have the same effect of controlling to some extent the habeas docket of the federal courts. A state prisoner who did not raise his federal claim in his state court proceedings, or who raised the federal claim but abandoned it, is barred under the procedural default doctrine from asserting his federal claim in a section 2254 proceeding unless the prisoner can demonstrate cause for the default and actual prejudice, or that failure to consider the claims will result in a "fundamental miscarriage of justice." *See Engle v. Isaac*, 456 U.S. 107, 129, 135 (1982); *Wainwright v. Sykes*, 433 U.S. 72, 90-91 (1977). And a state prisoner who already has had the benefit of one round of federal habeas review, but files a successive section 2254 petition, also must show either cause and prejudice or that a fundamental miscarriage of justice would result from failure to entertain his second petition. *See McCleskey v. Zant*, 111 S. Ct. 1454, 1470 (1991).

[19] Indeed, apart from the IAD itself only one federal statute appears to have any significant impact on state prosecutions: the federal wiretap statute, 18 U.S.C. § 2515. The fact that very few "laws . . . of the United States" have any affect on state criminal proceedings does not diminish the importance of protecting the rights that Congress provided in those few statutes on collateral review. In fact, history suggests that when Congress enacted section 2254's predecessor, the Habeas Corpus Act of February 5, 1887, ch. 28, 14 Stat. 385 ("1867 Habeas Corpus Act"), and included the language "laws . . . of the United States," it did so to enable individuals to petition for habeas relief for violations of the new federal Civil Rights Act of April 9, 1866, ch. 31, 14 Stat. 27 ("1866 Civil Rights Act"). *See* Lewis Mayers, *The Habeas Corpus Act of 1867: The Supreme Court as Legal Historian*, 33 U. Chi. L. Rev. 31, 44 (1965). The 1867 Habeas Corpus Act was introduced in Congress only two weeks after the 1866 Civil Rights Act was passed (and two years before the States ratified the Fourteenth Amendment). *Id.*; 2 Charles Warren, *The Supreme Court in United States History* 465 (1937); *see also Fay v. Noia*, 372 U.S. 391, 401 n.9 (1963) (the 1867 Habeas Corpus Act "was passed in anticipation of possible Southern recalcitrance toward Reconstruction legislation"). In fact, in the first reported case brought under the 1867 Habeas Corpus Act, *In re Turner*, 24 F. Cas. 337, 338 (D. Md. 1867) (No. 14,247), the petitioner claimed a violation of the 1866 Civil Rights Act, as well as of the Thirteenth Amendment. The court granted the habeas petition based in part on its conclusion that the petitioner was restrained in violation of the 1866 Civil Rights Act—a "law of the United States." *Id.* at 339.

The *Sunal-Davis* cases addressing section 2255 claims do not provide a basis for creating a higher threshold standard for federal collateral review of IAD speedy trial violations. Indeed, there is *no* reason for imposing a higher threshold upon the first habeas petition of a state prisoner who has presented his claim to the state courts. The importance of the interest at issue cannot be questioned: the IAD speedy trial guarantee safeguards a fundamental Sixth Amendment right. Comity and federalism do not require a higher standard: the IAD is an interstate compact to which Indiana voluntarily agreed, and which requires the uniform interpretation that only federal review can ensure. Finally, nothing in the plain language of section 2254 justifies making a distinction between constitutional claims and claimed violations of federal law. *See Davis*, 417 U.S. at 344 ("the clear and simple language of § 2254 authoriz[es] habeas corpus relief 'on the ground that [the prisoner] is in custody in violation of the . . . laws . . . of the United States' " (alterations and ellipses in original)). Consequently, IAD speedy trial claims should receive the same treatment that constitutional claims receive on habeas review.

D. Violations Of The IAD's Speedy Trial Guarantee Constitute "Exceptional Circumstances" And A "Miscarriage Of Justice."

Even if showing "exceptional circumstances" or "a miscarriage of justice" were a proper prerequisite for obtaining federal collateral relief for violations of the IAD or of federal laws generally, the State's violation of the IAD's speedy trial guarantee should fulfill that prerequisite without a further showing of actual prejudice.

As discussed above in Section II(A), the IAD's speedy trial guarantee safeguards the Sixth Amendment's fundamental right to a speedy trial. Congress judged the IAD's speedy trial guarantee so important that it mandated that pending charges against a

transferred prisoner be dismissed with prejudice whenever a state violates those requirements. That Congress selected a very strict sanction—dismissal with prejudice—and did not provide the courts with discretion whether to apply it demonstrates Congress's judgment that violations of the IAD's speedy trial guarantees are not harmless or technical errors, but fundamental defects, and further demonstrates Congress's intent that defendants not tried within the prescribed time limits should not be tried under any circumstances. It also demonstrates Congress's awareness of the practical difficulties of proving actual prejudice flowing from a speedy trial violation, difficulties this Court has recognized as well. *See Doggett*, 112 S. Ct. at 2692-93; *Barker*, 407 U.S. at 532.[20]

Indeed, because the mandatory dismissal sanction absolutely bars trials outside the prescribed time limits, a violation of the IAD's speedy trial requirement resembles a jurisdictional defect. An IAD speedy trial violation goes not to the question of how a defendant should be tried, but rather to whether the defendant should be tried at all. A trial outside the 120-day time period is analogous to a trial held by a court having no jurisdiction to try the defendant. A violation of the IAD's speedy trial requirement, by virtue of the IAD's mandatory dismissal sanction, therefore resembles the type of error, *i.e.*, lack of jurisdiction, that historically has been subject to habeas review. *See, e.g.*, *Ex parte Siebold*, 100 U.S. 371, 377 (1879); *Ex parte Lange*, 85 U.S. (18 Wall.) 163, 176 (1873). A conviction rendered in a court that lacks jurisdic-

[20] A requirement of showing actual prejudice is found neither in the IAD nor in any of this Court's opinions interpreting it. The IAD states only that a "court . . . *shall* enter an order dismissing the [charges] with prejudice" for failure to try a prisoner within the specified time. Art. V(c), 18 U.S.C. app. § 2 (emphasis added). This Court has enforced this provision literally. In *United States v. Mauro*, 436 U.S. 340, 364-65 (1978), the Court affirmed the dismissal of charges against a defendant for violation of the IAD's timely trial provision without requiring the defendant to prove that he was prejudiced by the delay. *Accord Brown v. Wolff*, 706 F.2d 902, 906 (9th Cir. 1983) (rejecting requirement of showing prejudice); *Cody v. Morris*, 623 F.2d 101, 103 (9th Cir. 1980).

tion is a fundamental miscarriage of justice. *See, e.g., Bowen v. Johnston*, 306 U.S. 19, 23, 27 (1939).

Furthermore, because the IAD is an interstate compact, violations of its provisions implicate more than local interests or the fate of individual defendants. A State's failure or refusal to abide by the terms of the IAD subverts the integrity and efficiency of the entire detainer system. This too constitutes an "exceptional circumstance" that warrants federal habeas review of IAD violations.

Thus, despite the inappropriateness of imposing extra burdens such as an "exceptional circumstances" or "miscarriage of justice" test on state petitioners who, like Petitioner, seek section 2254 relief for IAD violations, it is clear that state petitioners with IAD claims can satisfy those tests.

III. THE PLAIN LANGUAGE OF THE IAD, WHICH THE STATE COURTS OVERLOOKED, REQUIRES DISMISSAL OF THE CHARGES AGAINST PETITIONER.

Because the IAD is an interstate compact and a federal law, courts applying it have an obligation to conduct themselves in accordance with its plain language. *E.g., Texas v. New Mexico*, 462 U.S. 554, 564 (1983) (courts are not free to modify or disregard the requirements of an interstate compact, and must grant relief in accordance with its express terms); *Negonsott v. Samuels*, 113 S. Ct. 1119, 1122-23 (1993) (a court's task "is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, that language must ordinarily be regarded as conclusive" (quotations omitted)); *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992) (court must presume that Congress "says in a statute what it means and means in a statute what it says there").

The state courts in Petitioner's case did not effectuate the plain language of the IAD, which required dismissal with prejudice

after 120 days. Indeed, the trial court even admitted to ignorance of the 120-day speedy trial period prescribed by the plain language of the IAD. (J.A. 113.) The order denying Petitioner's motion to dismiss provided no explanation (J.A. 125), but at the motion hearing, the court blamed Petitioner for the court's ignorance, refused to acknowledge that dismissal of the charges was the proper relief, and stated, incorrectly, that Petitioner had not made a speedy trial demand. (J.A. 113-14.) The record, however, establishes that, even proceeding *pro se*, Petitioner requested compliance with the IAD's speedy trial provision in at least three different written motions. (J.A. 56, 88, 90-91.) This Court has concluded that the actions of a defendant who did far less than Petitioner to assert and protect his IAD speedy trial rights were sufficient to put the State on notice of an IAD claim. *United States v. Mauro*, 436 U.S. 340, 364-65 (1978) (government on notice of IAD speedy trial claim when transferred prisoner Ford demanded trial, even though he did not specifically invoke the IAD).

Even if the trial court had been correct about Petitioner's supposed failure to make a demand (the Indiana Supreme Court recognized that this was not correct), the IAD does not require the defendant to make a demand or to alert the court to its 120-day time limit. Article IV(c) of the IAD commands that "trial *shall* be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State"; hence, the obligation to comply with the IAD rests with the State or the state court, not with the transferred prisoner. *See, e.g., Brown v. Wolff*, 706 F.2d 902, 907 (9th Cir. 1983).

Furthermore, the record demonstrates that the State and the state court are chargeable with knowledge of the IAD's speedy trial guarantee: to obtain Petitioner from federal custody, the prosecutor pledged in writing that he would "bring [Petitioner] to trial . . . within the time specified in Article IV(c)" of the IAD (J.A. 5); and the state court certified on the same document that

it would follow the "terms and the provisions of the Agreement on Detainers." (J.A. 5-6.) It is almost inconceivable that these State officials would execute this transfer document without bothering to check the provisions cited therein that specify their obligations under the IAD.

The Indiana Supreme Court acknowledged that Petitioner had "made a general demand that the trial be held within the time limits of the IAD," rejecting the trial court's conclusion to the contrary. (J.A. 156.) Despite recognizing that Petitioner had demanded a trial within the time limit, the Court imposed an additional requirement that Petitioner object to the untimely trial date "at the time the [trial] date was set or during the remainder of the time limit." (J.A. 157.) Here again, though, the express language of the IAD—which the Indiana Supreme Court failed to reference—requires no demand and no objection. Art. IV(a), 18 U.S.C. app. § 2. Equally important, the Indiana Supreme Court's conclusion is incorrect. The trial court wanted all motions in writing. (J.A. 39-40, 123.) Petitioner objected in writing to the untimely trial date on July 26, arguing that the State was "forcing [him] to be tried beyond the limits as set forth in the Agreement on Detainer Act." (J.A. 56.) Furthermore, his three written motions raising the IAD's time limits, filed on July 26, July 29, and August 10 were all filed "during the remainder of the [IAD's] time limit." (J.A. 56, 88, 91.)[21]

On habeas review, the federal district court rejected Petitioner's habeas corpus petition on a ground not mentioned by the state courts: the district court held that Petitioner had been "unable to stand trial" under IAD Article VI(a), because of the number of pretrial motions he filed. (J.A. 196.) That Article provides

[21] The Indiana Supreme Court also suggested that by filing other defense motions after the setting of the trial date on August 1, Petitioner indicated a willingness to go to trial after the 120-day period. (J.A. 157.) Such a ruling would place a defendant in the untenable position of waiving either his speedy trial claim or the remainder of his defenses. Nothing in the IAD permits this analysis.

that the running of the IAD's time limitations shall be tolled "whenever and for long as a prisoner is unable to stand trial as determined by the court having jurisdiction of the matter." 18 U.S.C. app. § 2. This ruling misconstrued the phrase "unable to stand trial." When Congress enacted the IAD, the phrase "unable to stand trial" uniformly was understood to refer to a party's physical or mental ability to stand trial. *Birdwell v. Skeen*, 983 F.2d 1332, 1340-41 (5th Cir. 1993) (analyzing history and use of the phrase); *United States v. Taylor*, 861 F.2d 316, 322 (1st Cir. 1988); *see Pioneer Ins. Servs. v. Brunswick Assocs. Ltd. Partnership*, 113 S. Ct. 1489, 1495 (1993) (noting that the words in Congress's enactments are "to carry their ordinary, *contemporary*, common meaning" (emphasis added)). Petitioner was mentally competent and physically able to stand trial throughout the 120-day period.

Moreover, the district court's decision would be erroneous even if Congress had intended "unable to stand trial" to encompass the filing of pretrial motions. Article IV(a) requires "the court having jurisdiction of the matter," *i.e.*, the state trial court, to have "determined" this inability; the trial court made no such determination. Further, the record does not reflect that that court actually had any difficulty addressing Petitioner's motions in a prompt fashion. In fact, the record does contain the trial court's explanation for the delay, *i.e.*, a generally congested docket and other scheduling problems unrelated to Petitioner's motions. (J.A. 86.)[22]

[22] A crowded docket does not qualify as "good cause" to toll the IAD's speedy trial requirements. *United States v. Ford*, 550 F.2d 732, 743 (2d Cir. 1977) (trial continuances due to court's "already full" calendar are neither " 'necessary,' 'reasonable,' [n]or 'for good cause' within the meaning of the [IAD]"), *aff'd sub nom. United States v. Mauro*, 436 U.S. 340 (1978). While there is nothing in the record concerning the court's congested docket, it does not appear to be the result of numerous criminal cases. When Petitioner was charged on December 15, 1982, his was (at most) only the 55th criminal case placed on the Fulton County Circuit Court's docket in 1982.

The plain language of the IAD required dismissal of the charges against Petitioner. Each of the courts that has reviewed Petitioner's IAD claim failed to enforce the IAD's unambiguous provisions. As a result, Petitioner was tried and convicted, and is held in custody, in violation of one of the "laws . . . of the United States." A writ of habeas corpus should issue.

CONCLUSION

For the foregoing reasons, Petitioner Orrin Scott Reed respectfully requests that this Court reverse the judgment of the United States Court of Appeals for the Seventh Circuit and enter a judgment granting him a writ of habeas corpus. Alternatively, Petitioner requests that the Court remand this case to the United States Court of Appeals for the Seventh Circuit, directing the court of appeals to review the merits of his habeas claim.

Respectfully submitted,

Jerold S. Solovy
(Counsel of Record)
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Of Counsel:

Barry Levenstam
Ellen R. Kordik
Douglas A. Graham
Jason L. Peltz
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

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APPENDIX

APPENDIX

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution:

Art. I, § 10, cl. 3:

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Code, Appendix, Title 18:

§ 1. Short title

This Act may be cited as the "Interstate Agreement on Detainers Act".

§ 2. Enactment into law of Interstate Agreement on Detainers

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally joining in substantially the following form:

"The contracting States solemnly agree that:

"ARTICLE I

"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, information, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"ARTICLE II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request

for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"ARTICLE III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided,* That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement

and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"ARTICLE IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided,* That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further,* That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the re-

ceiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"ARTICLE V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate

authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"ARTICLE VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"ARTICLE VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"ARTICLE VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"ARTICLE IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party

State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

§ 3. Definition of term "Governor" for purposes of United States and District of Columbia

The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Mayor of the District of Columbia.

§ 4. Definition of term "appropriate court"

The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending.

§ 5. Enforcement and cooperation by courts, departments, agencies, officers, and employees of United States and District of Columbia

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose.

§ 6. Regulations, forms, and instructions

For the United States, the Attorney General, and for the District of Columbia, the Mayor of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this Act.

§ 7. Reservation of right to alter, amend, or repeal

The right to alter, amend, or repeal this Act is expressly reserved.

§ 8. Effective Date

This Act shall take effect on the ninetieth day after the date of its enactment.

§ 9. Special Provisions when United States is a Receiving State

Notwithstanding any provision of the agreement on detainers to the contrary, in a case in which the United States is a receiving State—

(1) any order of a court dismissing any indictment, information, or complaint may be with or without prejudice. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: The seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainers and on the administration of justice; and

(2) it shall not be a violation of the agreement on detainers if prior to trial the prisoner is returned to the custody of the sending State pursuant to an order of the appropriate court issued after reasonable notice to the prisoner and the United States and an opportunity for a hearing.

United States Code, Title 28:

§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court there of; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court

for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

§ 2254. State custody; remedies in State courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were

parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

(1) that the merits of the factual dispute were not resolved in the State court hearing;

(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

(3) that the material facts were not adequately developed at the State court hearing;

(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

(7) that the applicant was otherwise denied due process of law in the State court proceeding;

(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly support

such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous.

(e) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(f) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

§ 2255. Federal custody; remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.